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MARY E. D'ANDREA, CLERK
Per [Signature]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

KIM SMITH,	:	NO.: 1:CV01-0817
Plaintiff	:	
	:	(Caldwell, J.)
vs.	:	
	:	(Mannion, M.J.)
WEXFORD HEALTH SOURCES,	:	
INC., et al.,	:	JURY TRIAL DEMANDED
Defendants	:	

**DEFENDANTS, RONALD LONG, M.D.; WEXFORD HEALTH
SOURCES, INC.; PHYSICIAN ASSISTANT HOFFMAN; AND
PHYSICIAN ASSISTANT BAKER'S WAIVER OF REPLY
TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants, Wexford Health Sources, Inc.; Ronald Long, M.D.; Physician Assistant Hoffman; and Physician Assistant Baker, by and through their counsel, Lavery, Faherty, Young & Patterson, P.C., and in accordance with the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997(e), as amended by §803(d) of the Prison Litigation Reform Act of

1995, hereby waive their right to reply to Plaintiff's Amended Complaint in this action, which is brought pursuant to 42 U.S.C. §1983. Pursuant to 42 U.S.C. §1997(e)(g), this waiver does not constitute an admission of any of the allegations contained in the Amended Complaint. Furthermore, Defendants, Wexford Health Sources, Inc.; Ronald Long, M.D.; Physician Assistant Hoffman; and Physician Assistant Baker assert all available defenses to the Amended Complaint, including, but not limited to the following:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to state claims or causes of action upon which relief can be granted against Answering Defendants.

SECOND AFFIRMATIVE DEFENSE

At no time material hereto did Answering Defendants deprive Plaintiff of his federally protected rights and Answering Defendants' actions do not rise to the level of a violation of the Constitution or laws of the United States.

THIRD AFFIRMATIVE DEFENSE

At no time material hereto did Answering Defendants ever show any deliberate indifference towards any legitimate and/or serious medical needs of the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all times material hereto, Plaintiff was granted and afforded all rights and privileges available to prisoners at the SCI-Smithfield in relation to medical treatment.

FIFTH AFFIRMATIVE DEFENSE

At all times material hereto, Plaintiff was granted reasonable and proper medical treatment in accordance with state and federal laws and the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

At no time material hereto did Answering Defendants ever allow or administer unnecessary or wanton infliction of pain upon the Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint may be barred and/or limited by Plaintiff's failure to exhaust administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

At no time material hereto, were the Constitutional or civil rights of Plaintiff violated by Answering Defendants in any manner whatsoever.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to state a claim or cause of action for violation of Plaintiff's Eighth Amendment rights to the Constitution.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims, or some of them, are barred and/or limited by the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Any injuries and/or damages suffered by Plaintiff, which are specifically denied, were caused by other persons, entities or events over which Answering Defendants had no control, including Plaintiff himself.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has received proper and appropriate medical treatment from Answering Defendants at all times material hereto.

THIRTEENTH AFFIRMATIVE DEFENSE

The treatment afforded the Plaintiff by Answering Defendants was, at all times material hereto, in accordance with the applicable medical standards and applicable law.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries, if any, were the result of the condition from which Plaintiff suffered, his own actions, his own negligence, and/or his refusal to follow medical instructions.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to allege any cognizable claims for any punitive damages against the Answering Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to allege any claim or cause of action for any unconstitutional policy, practice, or custom against Answering Defendant, Wexford Health Sources, Inc. upon which relief can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

Answering Defendants plead as an affirmative defense all limitations on causes of action, including any and all limitations on damages, imposed by the Prison Litigation Reform Act of 1995 as amended, U.S.C. 1997(e)(a).

EIGHTEENTH AFFIRMATIVE DEFENSE

At no time material hereto did Answering Defendants discriminate against the Plaintiff with respect to job placement within the institution.


NINETEENTH AFFIRMATIVE DEFENSE

At no time material hereto did Plaintiff have a constitutional right to participate in any employment programs within the institution.

WHEREFORE, Answering Defendants, Wexford Health Sources, Inc.; Ronald Long, M.D.; Physician Assistant Hoffman; and Physician Assistant Baker respectfully request that this Honorable Court dismiss Plaintiff's Amended Complaint with prejudice and enter judgment in their favor along with the allowable costs of this action.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By: 

James D. Young, Esquire

Atty No. 53904

301 Market St., Suite 800

P.O. Box 1245

Harrisburg, PA 17108-1245

Attys for Defendants,

Wexford Health Sources, Inc.;

Ronald Long, M.D.;

Physician Assistant Hoffman;

and Physician Assistant Baker

DATE: 11/06/01

CERTIFICATE OF SERVICE

I, Linda L. Gustin, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 6th day of November, 2001, I served a true and correct copy of the foregoing DEFENDANTS, RONALD LONG, M.D.; WEXFORD HEALTH SOURCES, INC.; PHYSICIAN ASSISTANT HOFFMAN; AND PHYSICIAN ASSISTANT BAKER'S WAIVER OF REPLY TO PLAINTIFF'S AMENDED COMPLAINT via U.S. First Class mail, postage prepaid, addressed as follows:

Kim Smith
CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

John Talaber, Esquire
Pennsylvania Department of Corrections
Office of Chief Counsel
P. O. Box 598
Camp Hill, PA 17001-0598

Linda L. Gustin
Linda L. Gustin